



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Environmental Quality Formerly: Virginia Waste Management Board
VAC Chapter Number:	9 VAC 15-30-10 et seq. Formerly: 9 VAC 20-140-10 et seq.
Regulation Title:	Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes Formerly: Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes, Amendment 1
Action Title:	Adoption of Final Regulations
Date:	May 25, 2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

These regulations provide for the certification of recycling machinery and equipment for the purposes of local property tax exemptions. They contain the qualifying criteria for recycling machinery and equipment as well as the documentation required and instructions for applying for the certification. Substantive changes being proposed include:

- The requirement that the applicant provide proof of the purchase price is removed. Only proof of purchase will be required.

- To qualify for certification, the machinery and equipment must be operated at a fixed location in the Commonwealth, as required by statute.
- Additional definition is provided for ineligible items, in accordance with current practice. These are:
 1. Machinery and equipment that is used in a process that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;
 2. Non-processing or non-manufacturing machinery and equipment;
 3. Machinery and equipment used exclusively to handle finished products;
 4. Buildings or other structures; and
 5. Repair and maintenance items.
- Minor revisions to the application form.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On June 7, 2001, the Director of the Department of Environmental Quality adopted the final regulations, Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes, (9 VAC 15-30-10 et seq.) pursuant to § 58.1-3661 of the Code of Virginia. The regulations were previously adopted by the Virginia Waste Management Board. Amendment 1 was initially noticed as a Virginia Waste Management Board action. However, upon further review it was determined the regulatory authority for the regulation rested with the Department of Environmental Quality.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 58.1-3661 of the Code of Virginia specifies that recycling machinery and equipment certified by the Department of Environmental Quality may be eligible for a local property tax exemption. This section allows the governing body of any county, city or town to exempt or partially exempt qualifying machinery or equipment from local taxation.

The Office of the Attorney General has certified that the Department of Environmental Quality has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Department of Environmental Quality has undertaken to amend the Regulations for the Certification of Recycling and Machinery for Local Tax Exemption Purposes (9 VAC 15-30-10 et seq.) because nine years have passed since the adoption of the regulations, and it is necessary to update and clarify the regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action’s detail.

The new substantive provisions to this amendment to the regulations are:

- The requirement that the applicant supply proof of the purchase price has been removed. All that is required is a proof of purchase.
- A requirement was added in conformance with the statute that in order to qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location in the Commonwealth.
- The definition of ineligible machinery and equipment has been clarified and includes:
 1. Machinery and equipment that incorporates a finished product that has been made from a recyclable waste. This is one step removed from recycling;
 2. Non-processing or non-manufacturing machinery and equipment;
 3. Machinery and equipment used exclusively to handle finished products;
 4. Buildings or other structures; and
 5. Repair and maintenance items.
- Modifications to the application form.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public is clarification of what does and does not qualify as machinery and equipment that is used to process recyclable waste material into a usable product. There are no known disadvantages to the public.

The primary advantage to the agency is that the amendment should reduce the errors in the applications for equipment certification and therefore make it easier and faster to process them. There are no known disadvantages to the agency or the Commonwealth.

A matter of interest to the regulated community is that it will no longer be necessary to document the purchase price when applying for equipment certification. Only proof of purchase will be required. However, in order to document the amount of tax credit, proof of equipment cost may be required by the local taxing authority.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The phrase "for the purpose of these regulations" was stricken from the definition of Finished Product.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The proposed regulations were published in the *Virginia Register* on November 20, 2000. The public comment period on the regulations ran from November 6, 2000 until close of business on February 2, 2001. During the written comment period, three written comments were received. Public hearings were held on: December 19, 2000, at the Piedmont Regional Office of the Department of Environmental Quality (Richmond, Virginia); January 9, 2001, at the Northern Virginia Regional Office of the Department of Environmental Quality (Woodbridge, Virginia); and January 11, 2001 at the West Central Regional Office of the Department of Environmental Quality (Roanoke, Virginia).

Comment received and their responses:

- There was a request to delete the phrase "for purposes of these regulations" from the definition of Finished Product. The phrase was deleted.
- There was a comment requesting a change in the language in the section entitled Machinery and Equipment. The comment stated in part: "There could be instances where a waste product is converted into an intermediate product which could be offered for sale, as a 'finished product.' However, because of market conditions it is not economically feasible to sell the intermediate product and they are further processed into other products. Under the above language, the

second part of the process may not meet the criteria for a tax credit..." This change was not implemented because it would conflict with the language and intent of the enabling statute. Once a recyclable material has been processed into an item of tangible personal property, the purpose of the statute has been fulfilled.

- There was a request to add the words "non-capitalized" in front of the words "Repair and maintenance" in § 9 VAC 15-30-70 C.3. This proposed change was not implemented because it would create ambiguity in the regulations. The proposed change would imply a broader scope than the statute allows. The certification is for recycling machinery and equipment, not for the cost of installing or servicing the equipment.
- There was a request to delete the wording that requires that equipment be operated at a fixed location in the Commonwealth. The wording was retained because it states a statutory requirement.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Changes to the regulations include the following:

Section 9 VAC 15-30-20. Definitions:

- A definition for "Finished product" was added.
- The definition of "Purchase price" was deleted.

Section 9 VAC 15-30-70. Machinery and Equipment:

- Item C.2 was added to clarify the exclusion for machinery and equipment used to incorporate a finished product with recycled content. A finished product is no longer considered a solid waste.
- Item C.3 was added to clarify the exclusion for machinery and equipment used exclusively to handle a finished product.
- Item 6 was added to clarify the exclusion for repairs and maintenance items.

Section 9 VAC 15-30-80. Location

- The language was changed to require that the equipment operate at a fixed location in the Commonwealth.

Section 9 VAC 15-30-100. Equipment Documentation:

- Item 5, the purchase price, was deleted.
- References to the form for certification were deleted. Items concerning the form were moved to the end of the regulations.

Section 9 VAC 15-30-150. Severability

- The entire section was deleted since it is no longer needed.

Section 9 VAC 15-30-170. Administrative Procedures.

- Parts of this section that were no longer applicable were deleted and reference was made to Article 3 of the Virginia Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia.

Form DEQ 50-11, RECYCLING MACHINERY EQUIPMENT CERTIFICATION

- A reference was made to the form at the end of the regulations. By doing that, it is possible to change the form without changing the regulations.
- Changes were made to the form to include the applicant's telephone number and a request for process information.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments to these regulations will have a positive impact on family life in the Commonwealth by encouraging individuals and corporations to purchase and operate recycling equipment, which in turn will divert some of the waste that might otherwise go to solid waste facilities.